

Mackinac Straits Corridor Authority (MSCA)

Public Meeting

June 7, 2022 – 10:00 am

In-Person/Virtual Meeting ([Mackinac Straits Corridor Authority Meeting June 7, 2022 - YouTube](#))

Meeting Minutes - Draft

Members Present: Mike Nystrom, MSCA
Anthony England, MSCA

Members Absent: Paul Novak, MSCA

Also Present: Raymond Howd, Special Assistant Attorney General to MSCA
Dr. Mike Mooney, Consultant to MSCA
Peter Holran, Enbridge
Dan Cooper, HT Engineering, Consultant to MSCA
Monica Monsma, MDOT
James Lake, MDOT
Cory Petee, MDOT
Randy Debler, MDOT
Ryan Mitchell, MDOT
Tyler Steele, MDOT
Cindy Robinson, MDOT
Carrie Bates, MDOT

I. Welcome/Call to Order

Mackinac Straits Corridor Authority (MSCA) Chairman Michael Nystrom opened the meeting at 10:00 a.m. and welcomed attendees, guests, Dan Cooper, HT engineering consultant and pipeline expert, and Authority member Anthony England. Raymond Howd noted Authority member, Paul Novak, a practicing attorney, was not able to attend due to a conflicting court proceeding in California. Chairman Nystrom outlined the meeting agenda and public comment function, stating that individuals must sign-up for public comment, and then those individuals will be announced in order for public comment presentations. A public comment form was made available for use of written comments. All comments will be part of the public record of this meeting.

II. Approval of Agenda

Chairman Nystrom called for a Motion to Approve the Agenda. Member England noted that he would like an update from Raymond Howd on the Peninsula Fiber Network (PFN) agreement for Third-Party Utilities. And that subject should be added to Item 4 Old Business. Motion by Anthony England to accept the agenda with the above topic added to the agenda. Seconded by Chairman Mike Nystrom. 2 ayes, 0 nays. Motion carried.

III. Approval of February 16, 2022, Minutes

Chairman Nystrom called for a Motion to Approve the February 16, 2022, Meeting Minutes. It was noted under New Business, Item 2 where it says "Environmental Impact

State”, “State” should be corrected to “Statement”. Clarification was asked for “EIS process is noticed by the Corps...”. Ryan Mitchell, MDOT, explained when action is taken at the federal level it must be published in the Federal Register and that is what is referenced in that statement by using “notice” as a verb. Member England also noted that in the last sentence in the same paragraph, Amber Pastoor of Enbridge did not say there definitely would not be a delay, but that there would be a good chance there will not be a delay. In Item 3, the sentence “In the proceedings as intervenor...” should include a comma.

Motion by Anthony England to accept the minutes with the above corrections. Seconded by Chairman Mike Nystrom. 2 ayes, 0 nays. Motion carried.

IV. Old Business

1. Third-Party Utilities: Peninsula Fiber Network
Raymond Howd noted he has been working with Peninsula Fiber Network attorney on several drafts and revisions going back/forth with the agreement. Enbridge’s attorney has also reviewed the agreement since it has the right to approve or change any portion(s) of the final third-party agreement. It was hoped to have more accomplished prior to this meeting. Peninsula Fiber is interested in moving forward and it is the goal of all parties to have some type of a draft agreement before the October Board meeting.

V. New Business

1. Updates to Project Specifications – Mike Mooney, Consultant to the Authority
Dr. Mooney noted he has reviewed the jointly developed project specification edits submitted by Arup, the designer of record. He, along with MDOT’s chief Bridge Engineer Matt Chynoweth, find the revisions to be reasonable and acceptable. As background, he summarized that these jointly developed project specifications include nine sections and pertain to the permanent works that will be transferred (ownership) to the Authority upon satisfactory completion of construction. The jointly developed project specifications were approved February 2021, with minor edits approved in October 2021.

Dr. Mooney summarized each of the jointly developed specification revisions. He indicated that in no instance does a revision decrease the standard of quality that has been previously established. He conveyed that the non-editorial proposed revisions add value and/or make more stringent the quality requirements for the project. The requested revisions are found under:

Specification Section 033000
Specification Section 312000
Specification Section 315600
Specification Section 317117
Specification Section 317416

For greater detail of each revision, please see Arup’s memo on Edits to Jointly-Developed Specifications and Dr. Mooney’s letter report.

Chairman Nystrom called for a Motion to approve the revised jointly developed Project Specifications. Motion by Anthony England to approve and adopt the updates to the Project Specifications as included in the "Review of Edits to Jointly-Developed Specifications". Seconded by Chairman Mike Nystrom. 2 ayes, 0 nays. Motion carried.

2. Contractor Selection Status Update – Ryan Mitchell, MDOT; Mike Mooney, Consultant to the Authority
Ryan Mitchell gave a brief update on the contractor selection process, noting in March 2022 Enbridge issued the Request for Proposal (RFP) for the selection of a construction contractor to build the tunnel. Since then, interested proponents have participated in technical review meetings, including site visits, which have now been completed. Commercial discussions have also been conducted with all components to review and solicit their feedback on the contract and proposals. Proposals from the contractors in response to the RFP are anticipated for later in 2022, with contractor selection to follow. Peter Holran, Governmental Relations for Enbridge noted there were originally five consortiums that expressed interest, but now there are three active consortiums that are submitting proposals. Dr. Mike Mooney noted he has had the opportunity to observe the process and participate in site visits per the tunnel agreement and has found it to be useful as the project moves forward.
3. Final Construction Execution Plan (CEP) Material Change Approval Process – Raymond Howd, Special Assistant Attorney General
Raymond Howd noted that once Enbridge does select the tunnel contractor, they will begin drafting a tunnel Construction Execution Plan (CEP). Mr. Howd provided the Authority with a memorandum, which is an attorney-client privileged communication; however, before it can be released to the public, the Authority must waive that privilege.

Member Anthony England moved to waive the attorney-client privilege to continue with the discussion. Seconded by Chairman Mike Nystrom. 2 ayes, 0 nays. Motion carried.

Under Section 7.7 of the Tunnel Agreement, the process is outlined for the tunnel Construction Execution Plan. Enbridge and its contractors will develop a draft CEP that will list the key activities required for the construction of the tunnel, including schedule and milestones associated with the execution of those key activities. The Authority will have the opportunity to make suggested recommended changes to the draft CEP. Once those suggested recommendations are made, Enbridge and its contractors will finalize and develop the final tunnel CEP. An action item and purpose of the memorandum is for the Authority to discuss who or what consultants it would like to have review the proposed suggested recommendations and how it would like to be involved in the process for staying informed and whether or not to approve any suggested recommendations to the draft CEP. The Authority could designate one or more of the representatives involved in the jointly-developed project specifications team. Those individuals were the Authority's tunnel expert Michael Mooney, HT pipeline construction expert Daniel Cooper, Ryan Mitchell, MDOT Manager of Innovative Contracting, Matt Chynoweth, MDOT Chief Bridge Engineer, Ihab

Darwish, senior project manager of Alfred Benesch & Company, and Mahmoud Khwaja, Tunnels National Discipline Leader at CDM Smith. Eventually as the project moves forward the Authority will be contracting with an independent quality assurance contractor who will also become part of the team. If desired the Authority can approve these individuals now or wait until later, but any input the Authority can make now will assist in the next steps for staff, representatives, and consultants.

Chairman Nystrom agrees having the wealth of knowledge from all these experts to guide the Authority and ensure the process is functioning properly, the review is occurring on time, and specification changes are being brought to the Authority meetings and reported on is very important. Authority members agree the team of experts should be kept in place and directly involved as Enbridge chooses their contractor consortium.

Raymond Howd explained that once the CEP is completed, Enbridge will construct the tunnel in accordance with the final CEP. However, in the last section of 7.7, if Enbridge proposes to make any material changes to the final CEP, then it would provide the Authority written notice of the proposed change. As with the draft CEP, the Authority will need to decide how information is communicated with the Authority, when and by whom. Again, the team of experts could be very beneficial in tightening this process. The term "material changes" as defined in the tunnel agreement is "any substantive departure from the jointly developed project specifications provided for in Section 7.7(c)", item 2. This means if Enbridge submits any substantive material changes, it would not be able to implement any of the proposed changes until the Authority either approves the proposed changes in writing or the Authority fails to respond to Enbridge's notice of proposed changes within 30 calendar days. This is an aggressive time frame, and it is possible that when Enbridge submits these notices, the Authority may need to call a special meeting to evaluate, address and approve or deny any proposed material changes. The Authority will need to identify a designated representative to receive the notice of proposed changes, develop a process for it, and be prepared to call a special meeting to address the item, and meet required timeframes. MDOT and Enbridge staff are working to develop a Memorandum of Understanding (MOU) that allows the expert team to be involved as deemed necessary, to better define the terms, and to avoid lengthy disruptions to the process for everyone involved. The above motion could be extended to the group that would evaluate any proposed material changes and for the development of an internal process for the submission of notices, reviewing monthly reports, scheduling monthly public meetings, meeting tunnel industry best practices and Michigan specifications, and adhering to timeframes, so none of the proposed material changes are deemed accepted before the Authority can meet to review and take action. Special monthly public meetings could be scheduled and then cancelled if not needed.

Member Anthony England moved to approve the current team so they are in place and proceed with the process that the team will bring any recommended material changes to the draft tunnel construction execution plan or the CEP to the Authority for concurrence. The motion also includes the scheduling of monthly public meetings, and the development of a Memorandum of Understanding (MOU) for MSCA and Enbridge staff. Seconded by Chairman Mike Nystrom. 2 ayes, 0 nays. Motion carried.

4. United States Army Corps of Engineers (USACE) Permit Application – Ryan Mitchell, MDOT

The U.S. Army Corps of Engineers selected a third-party contractor shortly after the February Board meeting. The process is continuing to move forward, and the issuance of the Court's Notice of Intent is expected yet this summer. Enbridge is continuing to advance the Environmental Impact Statement (EIS) in cooperation with the Army Corps by responding to their data request, and they are moving forward with survey work to support the permit review process.

5. Status of Michigan Public Service Commission (MPSC) Proceedings – Raymond Howd, Special Assistant Attorney General

Raymond Howd noted he filed the initial brief on February 18, 2022, relying on the testimony of Dr. Mike Mooney, and Daniel Cooper, HT Engineering pipeline expert. They believe based on the jointly developed project specifications and their professional knowledge, that the tunnel is in the public interest and could be built to meet or exceed standard specifications in the industry. The Authority did not file a reply brief; however other interested parties did file a reply brief on March 11th, 2022. We are now waiting for the MPSC to render a decision. There is no idea when that may occur.

EGLE had issued Enbridge a permit on February 25th, 2021, and the Bay Mills Indian Tribe had 60 days to file an appeal, which it did on April 26th from their Chicago office. Their brief arrived at the Hearing Office at 5:36 pm eastern standard time. The rules require any appeal that is filed after 5:00 pm eastern standard time is to be considered filed the following day, which is how EGLE treated the appeal. The ALJ dismissed Bay Mills appeal on February 18th, 2022. Bay Mills is now appealing that decision arguing that since Michigan was on daylight savings time, the original appeal was filed at 4:36 pm eastern standard time making the brief timely. That appeal is ongoing and waiting for a decision on whether the brief was filed on time. MSCA is not involved in this appeal, as it is between Enbridge and Bay Mills. EGLE has also not taken a position in the appeal.

Chairman Nystrom noted the Authority had approved a consultation process with the Tribes and inquired if there has been any interaction with the Tribes since the February meeting. Ryan Mitchell, MDOT, stated there has been outreach activities for the Tribes, but not interaction with any of the Tribes.

VI. Public Comment

The public is encouraged to address Authority members at this time. Each member of the public is limited to three (3) minutes. Written public comment to the MSCA may be submitted via the [MSCA Public Comment Form](#).

Monica Monsma, MDOT, coordinated the public comments that were heard. Public comments are not question and answer periods for Authority members and there will not be a response provided from Authority members; however public comments will be taken under advisement for consideration. Three individuals signed up to give public comment. A full list is attached to these minutes, in order of presentations. Submitted comments will be included on the public website for viewing.

VII. Adjourn

With no further business at hand, Chairman Nystrom called for Motion to Adjourn. Motion by Anthony England. Seconded by Member Nystrom. Motion Carried.

Meeting adjourned at 10: 52 p.m.

Minutes taken by:

Cindy Robinson

Senior Executive Management Assistant

MDOT Bureau of Development

Approved: _____